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Calendar No. 16

100TH CONGRESS
1st Session

SENATE

REPORT
100-8

SWAN FALLS WATER RIGHTS SETTLEMENT

FEBRUARY 3, 1987.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 214]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 214) to direct the Federal Energy Regulatory Commission to issue an order with respect to docket numbered EL-85-38-000, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

S. 214 would require the Federal Energy Regulatory Commission to approve a settlement under Idaho law of water rights attached to hydroelectric projects owned by Idaho Power Company on the Snake River.

BACKGROUND

In the 1950's, Idaho Power Company received a license from the Federal Energy Regulatory Commission for its Hells Canyon Hydroelectric Project located on the Snake River. A critical element in the decision to award a license to Idaho Power, rather than to allow development of an alternative Federal hydroelectric project, was Idaho Power's agreement to a subordination clause stating that the project would be "operated in such a manner as would not conflict with the future depletion in the flow of the waters of the Snake River and its tributaries . . . ." In 1977, Idaho Power ratepayers, believing that the Hells Canyon subordination did not apply to other utility water rights on the Snake River, filed a complaint with the Idaho Public Utilities Commission (IPUC) charging that Idaho Power had failed to protect its rights to water for its

91-010

S 313-2.

hydroelectric project, and by doing so, had caused overcharges to its ratepayers.

The Idaho Supreme Court in 1982, ultimately ruled that the Hells Canyon subordination applied only as far up river as Idaho Power's Swan Falls Project. *Idaho Power Co.* v. *Idaho*, 104 Idaho 575, 661 P. 2d 741 (1982). In order to protect itself from liability to its ratepayers, Idaho Power subsequently filed suit against those water users upstream from the Swan Falls Project who it believes are infringing on its water rights, as well as against applicants for new upstream water licenses who would deplete the river further. This action has had the effect of paralyzing economic development requiring new water rights in much of southern Idaho.

In 1984, Idaho Power entered into an agreement with the State of Idaho which would settle the Swan Falls controversy. While the provisions are complex, the agreement would basically resolve the dispute by:

(1) Recognizing Idaho Power's right to certain minimum flows at the Swan Falls project (albeit at lower levels than the disputed water right it currently holds for the project).

(2) Recognizing the rights of existing lawful upstream diverters.

(3) Requiring new diversions to meet new specific public interest criteria, including a balancing of the economic benefit from the new diversion against the loss of hydropower generation.

(4) Making the agreement contingent upon: (a) the enactment of State legislation insulating Idaho power from any State regulatory sanctions proceeding from its relinquishment of water rights; and (b) requiring approval of the agreement by the Federal Energy Regulatory Commission (FERC).

Presently, all actions for implementation of the agreement have taken place except issuance of a FERC order approving the agreement. Issuance of such an order is necessary to protect Idaho Power against allegations that by entering into the agreement it has: (1) alienated property (i.e. the disputed water rights) which is part of its Snake River hydroelectric projects in violation of standard license conditions; and (2) reduced the usefulness of its capital investments for purposes of consideration in wholesale ratemaking.

In November 1984, Idaho Power requested a declaratory order from FERC that implementation of the agreement would assure a sufficient supply of water to the affected hydroelectric projects and would be in the public interest. The request for declaratory order (which contains the text of the Swan Falls agreement) is included as an appendix to this report.[1]

In the same proceeding, Idaho Power has submitted proposed settlements with the Department of the Interior, the National Marine Fisheries Service, and the Idaho Natural Resources Legal Foundation, Inc. that resolve their concerns over the effect of the agreement on fish and wildlife water requirements. In effect, these settlements reserve the environmental issues raised by the Swan Falls agreement for disposition in future relicensing proceedings. No action has been taken on the request for a declaratory order or on the proposed settlements. The Idaho Wildlife Federation has filed a

[1] Exhibits to the Swan Falls agreement have been omitted, and are retained in Committee files.

late intervention in the proceeding opposing the Swan Falls agreement.

S. 214 provides that FERC "is only authorized and directed, in lieu of" Idaho Power's request for a declaratory order to issue within 90 days of enactment of the Act an order providing that during the remainder of the license terms for Idaho Power's affected hydroelectric projects; (1) the agreement shall not be considered inconsistent with the licenses for the projects; and (2) the agreement shall not be deemed imprudent for purposes of section 205 of the Federal Power Act.

LEGISLATIVE HISTORY

S. 214 was introduced by Senators McClure and Symms on January 6, 1987. Identical legislation, H.R. 519, was introduced in the House of Representatives by Congressmen Craig and Stallings on January 7, 1987.

At the end of the 99th Congress, Senators McClure and Symms introduced a bill, S. 2894, which was similar to S. 214. S. 2894 was referred to the Committee on Energy and Natural Resources, but the Committee did not take further action.

S. 214 is materially identical to an amendment passed by the 99th Congress as part of H.R. 5465, the "National Appliance Energy Conservation Act of 1986." Although President Reagan vetoed H.R. 5465, he indicated support for the Swan Falls amendment in his veto message.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on January 28, 1987, by unanimous voice vote with a quorum present, recommended that the Senate pass S. 214 without amendment.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 2, 1987.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 214, a bill to direct the Federal Energy Regulatory Commission to issue an order with respect to docket numbered EL-85-38-000, as ordered reported by the Senate Committee on Energy and Natural Resources, January 29, 1987. CBO expects that this bill would result in no cost to the federal government or to state or local governments.

The bill would order the Federal Energy Regulatory Commission to approve an agreement between the State of Idaho and the Idaho Power Company concerning water rights on the Snake River.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

REGULATORY IMPACT EVALUATION

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 214.

EXECUTIVE COMMUNICATIONS

No formal views on S. 214 have been requested from the Administration. However, in his message vetoing H.R. 5465 at the end of the 99th Congress, the President indicated support for an amendment to that Act which was materially identical to S. 214.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill, S. 214, as reported.

APPENDIX

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

IDAHO POWER COMPANY	PROJECT NOS	18-000
		503-001
		1975-000
		2055-000
		2061-000
		2726-001
		2777-001
		2778-001

PETITION FOR DECLARATORY ORDER

Idaho Power Company, "Licensee", hereby petitions the Federal Energy Regulatory Commission for a declaratory order as requested herein. In support of this petition Licensee states as follows:

I

The exact name, business address and telephone number of the Licensee are:

Idaho Power Company
1220 Idaho Street
P O Box 70
Boise, Idaho 83707
1-208-383-2678

The Commission is respectively requested to send copies of all communications, orders, and correspondence on this petition directly to:

Paul L Jauregui
Vice President, Secretary and
General Counsel
1220 Idaho Street
P O Box 70
Boise, Idaho 83707

Lee S Sherline
Leighton & Sherline
Suite 101
1010 Massachusetts Avenue N W
Washington, D C 20001-5402

II

Licensee is the holder of licenses issued by the Commission for the following projects on the Snake River and its tributaries:

Project Number	Name
18-000*	Twin Falls
503-001	Swan Falls
1975-000	Bliss
2055-000	C J Strike
2061-000	Lower Salmon
2726-001	Upper and Lower Malad
2777-001	Upper Salmon
2778-001	Shoshone Falls

*Licensee has pending an application for a new license for Project No 18-000 (Twin Falls) and is presently operating that project under an annual license.

III

A controversy has developed concerning the definition of Licensee's water rights for the projects listed above. Two state court actions and a complaint before the Idaho Public Utilities Commission have resulted from the controversy. An agreement dated October 25, 1984, among the State of Idaho, by and through John V Evans, in his official capacity as Governor of the State of Idaho, Jim Jones in his official capacity as Attorney General of the State of Idaho and Licensee was executed, hereinafter referred to as the "Agreement". The Agreement is attached hereto as Exhibit A and by this reference made a part hereof. Licensee makes this petition pursuant to

Paragraph 13(B)(i) of the Agreement. The Agreement, if implemented in accordance with all of its terms and conditions, will define Licensee's water rights, resolve certain controversies now existing and assure a sufficient supply of water for the projects listed in Paragraph II hereof.

WHEREFORE, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, Petitioner requests a declaratory order that implementation of the Agreement, as provided therein, would assure a sufficient supply of water for Licensee's projects listed in Paragraph II hereof and that the Agreement, if it becomes effective pursuant to Paragraph 13 thereof, would be in the public interest.

DATED this ~~7th~~ day of December, 1984.

IDAHO POWER COMPANY

By James E Bruce
James E Bruce
Chairman of the Board
and Chief Executive Officer

CORPORATE SEAL

ATTEST:

By Paul L Jauregui
Paul L Jauregui
Vice-President, Secretary
and General Counsel

ACKNOWLEDGEMENT

STATE OF IDAHO)
) ss
County of Ada)

JAMES E BRUCE, being duly sworn, says that he is the Chairman of the Board and Chief Executive Officer of Idaho Power Company; that he has read the foregoing Petition for Declaratory Order and knows the contents thereof; and

that the allegations thereof are true and correct to the best of his knowledge, information and belief.

By /s/ James E Bruce

SUBSCRIBED AND SWORN to before me this 26th day of November, 1984.

(NOTARIAL SEAL)

/s/ Lucy L Reynolds
NOTARY PUBLIC
Residing at Boise, Idaho

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of November, 1984, I mailed a true and correct copy of the foregoing Petition for Declaratory Order upon:

Honorable James A McClure
United States Senate
Washington, D C 20510

Honorable Steve Symms
United States Senate
Washington, D C 20510

Honorable Larry Craig
U S House of Representatives
Washington, D C 20510

Honorable George Hansen
U S House of Representatives
Washington, D C 20510

Honorable John V Evans
Governor of the State of Idaho
Statehouse
Boise, ID 83707

Jim Jones (2)
Attorney General
Statehouse
Boise, ID 83720

David J Barber, Deputy Attorney General
Idaho Department of Water Resources
450 West State Street
Boise, ID 83720

Clive Strong
Deputy Attorney General
Statehouse
Boise, ID 83720

Steven V Goddard
Deputy Attorney General
Idaho Department of Fish and Game
600 South Walnut
P O Box 25
Boise, ID 83707

Michael Gilmore
Deputy Attorney General
Idaho Public Utilities Commission
Statehouse
Boise, ID 83720

Chairman
Idaho Water Resources Board
Statehouse
Boise, ID 83720

Director
Idaho Department of Water Resources
450 West State Street
Boise, ID 83720

Director
Idaho Department of Lands
Statehouse
Boise, ID 83720

Director
Idaho Fish and Game Department
600 South Walnut Street
P O Box 25
Boise, ID 83707

Director
Idaho Department of Parks
and Recreation
Statehouse
Boise, ID 83720

Chief
Bureau of Water Quality
Idaho Department of Health & Welfare
500 North Curtis
Boise, ID 83704

State Historic Preservation Officer
Idaho Historical Society
610 North Julia Davis Drive
Boise, ID 83706

Idaho Public Utilities Commission
472 West Washington Street
Boise, ID 83720

Oregon Public Utility Commissioner
200 Public Service Building
Salem, OR 97310

Nevada Public Service Commission
505 East King Street
Carson City, Nevada 89701

Wyoming Public Service Commission
Supreme Court Building
Cheyenne, Wyoming 82001

U S Department of the Army
North Pacific Division
Corps of Engineers
P O Box 2870
Portland, OR 97208

Chief
Engineering Division
Department of the Army
Walla Walla District Corps of Engineers
Building 602, City-County Airport
Walla Walla, WA 99362

Federal Energy Regulatory Commission
Quenton Edson, Director
Office of Hydro Power Licensing
825 North Capitol
Washington, D C 20426

Regional Engineer
Federal Energy Regulatory Commission
333 Market Street, 6th Floor
San Francisco, CA 94105

Regional Administrator, Region X
Environmental Protection Agency
1200 Sixth Avenue
Seattle, WA 98101

Environmental Protection Agency
422 West Washington Street
Boise, ID 83702

Secretary of the Interior
Washirgton, D C 20240

Regional Director
Regior 1
U S Fish and Wildlife Service
Lloyd Building, Suite 1692
500 NE Multnomah Street
Portland, OR 97232

Regional Director
U S Fish and Wildlife Service
4620 Overland Road
Boise, ID 83705

Office of Environmental Project
Review
Department of the Interior
Washirgton, D C 20240

Regional Environmental Officer
Department of the Interior
Suite 1692
500 NE Multnomah Street
Portland, OR 97232

Mr Bill Lloyd
Regional Director
Bureau of Reclamation
Box 043-550 West Fort Street
Boise, ID 83724

Regional Director
Upper Colorado Region
Bureau of Reclamation
P O Box 11568
Salt Lake City, UT 84111

National Parks Service
Room 990
915 Second Avenue
Seattle, WA 98174

State Director
Bureau of Land Management
230 Collins Road
Boise, ID 83702

National Marine Fisheries Service
7600 Sandpoint Way NE
BIN C15700
Seattle, WA 98115

Secretary of Agriculture
General Counsel
Department of Agriculture
Washington, D C 20250

Chief of the Forest Service
Department of Agriculture
P O Box 2417
Washington, D C 20013

Water Resources Coordinator
U S Coast Guard (G-WS/73)
Department of Transportation
Washington, D C 20590

Director, Division of Hydroelectric
Resource Development
Department of Energy
Federal Building, Room 7104
12th & Pennsylvania Avenue, NW
Washington, D C 20461

Bonneville Power Administration
Box 3621
Portland, OR 97208

Northwest Power Planning Council
Suite 200
700 S W Taylor Street
Portland, OR 97205

Northwest Power Planning Council
450 West State Street
Boise, ID 83720

Oregon Department of Fish and Wildlife
P O Box 3503
Portland, OR 97208

Washington Department of Fisheries
Room 115, General Administration Building
Olympia, WA 98504

Washington Department of Game
600 North Capitol Way
Olympia, WA 98504

Mr Gordon High Eagle
Nez Perce Tribal Executive Committee
P O Box 305
Lapwai, ID 83540

Mr Robert C Strom
Nez Perce Tribal Executive Committee
P O Box 305
Lapwai, ID 83540

Chairman
Shoshone Bannock Tribal Council
P O Box 306
Fort Hall, ID 83203

Chairman
Yakima Tribal Council
P O Box 151
Toppenish, WA 98948

Board of County Commissioners:
Twin Falls County
Twin Falls, ID 83301

Board of County Commissioners
Jerome County
Jerome, ID 83338

Board of County Commissioners:
Gooding County
Gooding, ID 83330

Board of County Commissioners:
Elmore County
Mountain Home, ID 83647

Board of County Commissioners:
Owyhee County
Murphy, ID 83650

Board of County Commissioners
Ada County
650 Main Street
Boise, ID 83702

/s/ Nicolas R Ysursa

Nicolas R Ysursa
Attorney for Idaho Power Company
Idaho Power Company
1220 Idaho Street
P O Box 70
Boise, Idaho 83707

EXHIBIT A

AGREEMENT

This Agreement is made and entered into among the State of Idaho, by and through the Governor, hereinafter referred to as "State"; John V. Evans, in his official capacity as Governor of the State of Idaho; Jim Jones, in his official capacity as Attorney General of the State of Idaho; and Idaho Power Company, a corporation hereinafter referred to as "Company".

1. Effective Date

This Agreement shall take effect upon execution, except as to paragraphs 7, 8, and 11.

2. Executive Commitment

When the parties agree on certain actions to be taken by State, it is their intent to commit the executive branch of Idaho state government, subject to constitutional and statutory limitations, to take those actions.

3. Attorney General

Jim Jones is a party to this Agreement solely by reason of his official position as counsel for the State of Idaho and its agencies in Idaho Power Company v. State of Idaho, Ada County Civil Case No. 62237 and Idaho Power Company v. Idaho Department of Water Resources, Ada County Civil Case No. 81375.

4. Good Faith

When the parties agree to jointly recommend a particular piece of legislation or action by another entity, each party agrees to actively and in good faith support such legislation or action.

The State shall enforce the State Water Plan and shall assert the existence of water rights held in trust by the State and that the Snake River is fully appropriated as needed to enforce the State Water Plan. State and Company shall not take any position before the legislature or any court, board or agency which is inconsistent with the terms of this agreement.

5. Stay Of Current Court And Regulatory Action

A. The parties shall file a motion with the court in Ada County Civil Case Numbers 81375 and 62237, seeking a

stay of further proceedings until seven days following the adjournment of the First Regular Session of the 48th Idaho Legislature, except as to preservation of testimony pursuant to the Idaho Rules of Civil Procedure, completion of designated discovery filed by the State of Idaho and dismissal of various defendants by Company. The State shall designate in writing, within fifteen (15) days from the execution of this Agreement, those items of its discovery that must be responded to by Company. The Company shall respond to those items of discovery designated by the State within ninety (90) days from execution of this Agreement.

B. The parties shall request the Federal Energy Regulatory Commission (FERC) to stay any subordination-related decisions in any Company project listed in paragraph 7 licensing or relicensing proceeding pending implementation of this Agreement except as contemplated in paragraph 12 of this Agreement. The parties acknowledge, however, that FERC could independently take action prejudicial to their interests and, in such event, the parties may take reasonable actions necessary to protect their interests. Further, the State shall not file any motions to intervene in Project Numbers 2777 (Upper Salmon) and 2778 (Shoshone Falls); however, by agreeing to this provision, the Company in return waives any defense to the timeliness of a motion to intervene caused by this Agreement in the event this Agreement is not implemented. Company is not agreeing, however, that a motion to intervene would be timely if filed now.

C. The parties shall not attempt to influence any executive agency of the United States to take a particular position regarding subordination in any Company FERC licensing or relicensing proceeding pending implementation of this Agreement.

6. Legislative Program

The parties agree to propose and support the following legislation to implement this Agreement:

A. Enactment of Public Interest Criteria as set forth in Exhibit 1 attached hereto.

B. Funding for a general adjudication of the Snake River Basin generally as set forth in Exhibit 2 attached hereto.

C. Establishment of an effective water marketing system.

D. Funding for hydrologic and economic studies, as set forth in Exhibit 3 attached hereto.

E. Allocation of gains upon sale of utility property as set forth in Exhibit 4 attached hereto.

F. Limitations on IPUC jurisdiction as set forth in Exhibit 5 attached hereto.

G. Rulemaking and moratorium authority for Idaho Department of Water Resources generally as set forth in Exhibit 8 attached hereto.

7. Company's Water Right

State and Company agree that Company's water right shall be as follows (Bracketed names used below refer to Company projects):

A. State Water License Numbers 36-2013 (Thousand Springs), 37-2128 & 37-2472 (Lower Malad), 37-2471 (Upper Malad), 36-2018 (Clear Lake), 36-2026 (Sand Springs), 02-2057 (Upper Salmon), 02-2001A, 02-2001B, 02-2059, 02-2060 (Lower Salmon), 02-2064, 02-2065 (Bliss), 02-2056 (Twin Falls), 02-2036 (Shoshone Falls), 02-2032, 02-4000, 02-4001, and Decree Number 02-0100 (Swan Falls) entitle the Company to an unsubordinated right of 3900 c.f.s. average daily flow from April 1 to October 31, and 5600 c.f.s. average daily flow from November 1 to March 31, both to be measured at the Murphy U.S.G.S. gauging station immediately below Swan Falls. These flows are not subject to depletion. The Murphy gauging station is located at latitude 43° 17' 31", Longitude 116° 25' 12", in NW1/4NE1/4SE1/4 of Section 35 in Township 1 South, Range 1 West, Boise Meridian, Ada County Hydrologic Unit 17050103, on right bank 4.2 miles downstream from Swan Falls Power plant, 7.5 miles NE of Murphy, at river mile 453.5.

B. The Company is also entitled to use the flow of the Snake River at its facilities to the extent of its actual beneficial use but not to exceed those amounts stated in State Water License Numbers 36-2013 (Thousand Springs), 37-2128 & 37-2472 (Lower Malad),

37-2471 (Upper Malad), 36-2018 (Clear Lake), 36-2026 (Sand Springs),02-2057 (Upper Salmon), 02-2001A, 02-2001B, 02-2059, 02-2060 (Lower Salmon), 02-2064, 02-2065 (Bliss), 02-2056 (Twin Falls), 02-2036 (Shoshone Falls), 02-2032, 02-4000, 02-4001, and Decree Number 02-0100 (Swan Falls), but such rights in excess of the amounts stated in 7(A) shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the State in accordance with State law unless the depletion violates or will violate paragraph 7(A). Company retains its right to contest any appropriation of water in accordance with State law. Company further retains the right to compel State to take reasonable steps to insure the average daily flows established by this Agreement at the Murphy U.S.G.S. gauging station. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Company facilities shall not be considered in the calculation of the minimum daily stream flows set forth herein. This paragraph shall constitute a subordination condition.

C. The Company's rights listed in paragraph 7(A) and 7(B) are also subordinate to the uses of those persons dismissed from Ada County Case No. 81375 pursuant to the contract executed between the State and Company implementing the terms of I.C. §§ 61-539 and 61-540.

D. The Company's rights listed in paragraph 7(A) and 7(B) are also subordinate to those persons who have beneficially used water prior to October 1, 1984, and who have filed an application or claim for said use by June 30, 1985.

E. Company's ability to purchase, lease, own, or otherwise acquire water from sources upstream of its power plants and convey it to and past its power plants below Milner Dam shall not be limited by this agreement. Such flows shall be considered fluctuations resulting from operation of Company facilities.

F. Upon implementation of this Agreement, State and Company shall consent to entry of decrees in Ada County Civil Case Nos. 62237 and 81375 that describe the Company's water right as provided in paragraphs 7(A) through 7(E).

8. Damages Waiver

Company waives any claim against the State or its agencies for compensation or damages it may have or that may arise from any diminution in water available to Company at its facilities as a result of this Agreement. Company waives any claim for compensation or damages from any use approved by the state in accordance with paragraph 7B. Company retains its right to seek injunctions, compensation, damages, or other relief from any future appropriator, as defined in paragraph 7(B), whose use of water violates or will violate the Company's water right of 3900 c.f.s. average daily flow from April 1 to October 31, and 5600 c.f.s. average daily flow from November 1 to March 31, as measured at the Murphy gauging station, and also retains its rights against the state and its agencies as set out in paragraph 7(B).

9. Proposed 1180 Contract

The parties acknowledge that the Governor and the Company have finalized the terms of a contract that would implement the provisions of Senate Bill 1180 of the First Regular Session of the Idaho Legislature, presently codified as §§ 61-539 and 61-540, Idaho Code which is being executed on this date.

10. Agreement Not An Admission

The parties agree that this Agreement represents an attempt to compromise pending litigation, and it shall not be considered an admission, waiver, or abandonment of any issue of fact or law by any party, and no party will assert or contend that paragraphs 7, 8, and 11 have any legal effect until this Agreement is implemented by the accomplishment of the acts described in paragraph 13.

11. Status of State Water Plan

State and Company agree that the resolution of Company's water rights and recognition thereof by State together with the Idaho State Water Plan provide a sound comprehensive plan for the management of the Snake River watershed. Thus, the parties acknowledge that this Agreement provides a plan best adapted to develop, conserve, and utilize the water resources of the region in the public interest. Upon implementation of this agreement, State and Company will present the Idaho State Water Plan and this document to FERC as a comprehensive plan for the management of the Snake River Watershed.

12. Regulatory Approvals

A. Within 45 days of the execution of this Agreement, Company shall file appropriate pleadings or other documents with the Idaho Public Utilities Commission (IPUC), to obtain an order determining that the execution and implementation of this Agreement is in the public interest, and does not constitute an abandonment, relinquishment or transfer of utility property. Such pleadings or other documents shall also provide that the order shall state that any effect upon the Company's hydro generation resulting from execution and implementation of this Agreement shall not be grounds now or in the future for a finding or an order that the Company's rate base or any part thereof is overstated or that any portion of its electrical plant in service is no longer used and useful or not devoted to public service, nor will such effect upon the Company's hydro generation be grounds for a finding or an order reducing the Company's present or future revenue requirement or any present or future rate, tariff, schedule or charge.

In the event the IPUC does not issue an order acceptable to the parties, the parties will seek appropriate remedial legislation.

B. i. Within forty-five (45) days of the execution of this Agreement, the Company shall file with FERC a request for a declaratory ruling that the implementation of this agreement assures a sufficient supply of water for Project Numbers 1975 (Bliss), 2061 (Lower Salmon), 2777 (Upper Salmon), 2055 (C.J. Strike), 2778 (Shoshone Falls), 18 (Twin Falls), 2726 (Upper and Lower Malad), and 503 (Swan Falls).

ii. Within forty-five (45) days of implementation of this Agreement, the Company shall submit this Agreement and the consent decree to FERC in the proceedings for relicensing of Project Numbers 18 (Twin Falls), and 503 (Swan Falls) and the State and Company shall request that FERC recognize this Agreement as a definition of the Company's water rights in those proceedings.

iii. When any project listed in (i) hereof is hereafter due for relicensing proceeding, Company

shall submit this Agreement to FERC in the relicensing proceeding, and the State and Company shall request that FERC recognize this Agreement as a definition of the Company's water right in those proceedings.

C. The Governor and Attorney General on behalf of the State and its agencies shall seek intervention in support of the Company's efforts before the IPUC and FERC, and shall actively support the issuance of acceptable orders by both Commissions, and shall provide authorized witnesses to testify in the proceedings at the request of Company.

D. Company shall, if necessary, file appropriate pleadings or other documents with the Public Utility Commissioner of Oregon for an order similar to that stated in paragraph 12(A). Such filing, if necessary, shall be done within forty-five (45) days of the execution of this Agreement.

13. Conditions on Effectiveness

A. The provisions of paragraphs 7, 8, and 11 shall not be binding and effective until each of the following conditions have been implemented:

i. Amendment of the State Water Plan to implement the provisions of Exhibit 6;

ii. Enactment of the legislative program outlined in paragraph 6;

iii. Issuance of an appropriate order by IPUC as set forth in paragraph 12(A), or enactment of appropriate legislation by the State of Idaho, as set forth in Exhibit 5;

iv. Issuance of an appropriate order by FERC in a form acceptable to the parties as set out in paragraph 12(B)(i);

v. Dismissal with prejudice of the proceeding pending before the IPUC in Case No. U-1006-124;

vi. Issuance of an appropriate order by the Public Utility Commissioner of Oregon if Company has requested one; and

vii. Enactment by the State of Idaho of subordination legislation, as set forth in Exhibits 7A and 7B attached to this Agreement.

B. In the event any of these conditions are not implemented, or should this Agreement be terminated as provided in paragraph 16, then this Agreement shall be void.

14. Authority of Department of Water Resources and Idaho Water Resource Board Not Affected

This Agreement shall not be construed to limit or interfere with the authority and duty of the Idaho Department of Water Resources or the Idaho Water Resource Board to enforce and administer any of the laws of the state which it is authorized to enforce and administer.

15. Waiver, Modification or Amendment

No waiver, modification, or amendment of this Agreement or of any covenants, conditions, or limitations herein contained shall be valid unless in writing duly executed by the parties and the parties further agree that the provisions of this section may not be waived, modified, or amended except as herein set forth.

16. Termination of Contract

This Agreement shall terminate upon the failure to satisfy any of the conditions stated in paragraph 13. The parties shall meet on May 15, 1985, to determine if the contract shall be continued or terminated.

17. Subsequent Changes In Law

This Agreement is contingent upon certain enactments of law by the State and action by the Idaho Water Resource Board. Thus, within this Agreement, reference is made to state law in defining respective rights and obligations of the parties. Therefore, upon implementation of the conditions contained in paragraph 13, any subsequent final order by a court of competent jurisdiction, legislative enactment or administrative ruling shall not affect the validity of this Agreement.

18. Successors

The provisions of this Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties.

19. Entire Agreement

This Agreement sets forth all the covenants, promises, provisions, agreements, conditions, and understandings between the parties and there are no covenants, provisions, promises, agreements, conditions, or understandings, either oral or written between them other than are herein set forth.

20. Effect of Section Headings

The section headings appearing in this Agreement are not to be construed as interpretations of the text but are inserted for convenience and reference only.

21. Multiple Originals

This Agreement is executed in quadruplicate. Each of the four (4) Agreements with an original signature of each party shall be an original.

IN WITNESS WHEREOF, the parties have executed this Agreement at Boise, Idaho, this 25th day of October, 1984.

STATE OF IDAHO

By: _____
JOHN V. EVANS
Governor of the
State of Idaho

IDAHO POWER COMPANY

By: _____
JAMES E. BRUCE
Chairman of the Board
and Chief Executive
Officer

By: _____
JIM JONES
Attorney General of the
State of Idaho

ATTEST:

PETE T. CENARRUSA
Secretary of State

(Seal of the State of Idaho)

(Corporate Seal of Idaho Power Company)

ATTEST:

Secretary of Idaho Power

CERTIFICATE OF SECRETARY

Paul L. Jauregui, as secretary of Idaho Power Company, a Maine Corporation, hereby certifies as follows:

(1) That the corporate seal, or facsimile thereof, affixed to the instrument is in fact the seal of the corporation, or a true facsimile thereof, as the case may be; and

(2) That any officer of the corporation executing the instrument does in fact occupy the official position indicated, that one in such position is duly authorized to execute such instrument on behalf of the corporation, and that the signature of such officer subscribed thereunto is genuine; and

(3) That the execution of the instrument on behalf of the corporation has been duly authorized.

In witness whereof, I, PAUL L. JAUREGUI, as the secretary of Idaho Power Company, a Maine corporation, have executed this certificate and affixed the seal of Idaho Power Company, a Maine Corporation, on this 25th day of October, 1984.

Paul L. Jauregui
Secretary of Idaho Power Company

CERTIFICATE OF SECRETARY OF STATE

OF THE STATE OF IDAHO

PETE T. CENARRUSA, as Secretary of State of the State of Idaho, hereby certifies as follows:

1. That the State of Idaho seal, or facsimile thereof, affixed to the instrument is in fact the seal of the State of Idaho, or a true facsimile thereof, as the case may be; and

2. That the officials of the State of Idaho executing the instrument do in fact occupy the official positions indicated, that they are duly authorized to execute such instrument on behalf of the State of Idaho, and that the signatures of such officials of the State of Idaho subscribed thereunto are genuine; and

3. That the execution of the instrument on behalf of the State has been duly authorized.

IN WITNESS WHEREOF, I, Pete T. Cenarrusa, Secretary of State of the State of Idaho, have executed this Certificate and affixed the seal of the State of Idaho on this 25th day of October, 1984.

PETE T. CENARRUSA
Secretary of State
State of Idaho

STATE OF IDAHO)
) ss.
County of Ada)

On this 31st day of October, 1984, before me, a Notary Public, in and for said County and State, personally appeared JAMES E. BRUCE, and PAUL L. JAUREGUI, known or

identified to me to be the President and Secretary, respectively, of Idaho Power Company, the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

NOTARY PUBLIC FOR IDAHO
Residing at Boise, Idaho

STATE OF IDAHO)
) ss.
County of Ada)

On this 25th day of October 1984, before me, a Notary Public, in and for said County and State, personally appeared JOHN V. EVANS, known or identified to me to be the Governor of the State of Idaho; JIM JONES, known or identified to me to be the Attorney General of the State of Idaho; and PETE T. CENARRUSA, known to me to be the Secretary of the State of Idaho; and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

NOTARY PUBLIC FOR IDAHO
Residing at Boise, Idaho